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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,259	07/18/2003	Steven Michael Hausman	2002P20760US01	3269
7590 05/02/2008 Siemens Corporation Intellectual Property Department 170 Wood Avenue South Iselin, NJ 08830			EXAMINER HASSAN, AURANGZEB	
			ART UNIT 2182	PAPER NUMBER
			MAIL DATE 05/02/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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TECHNOLOGY CENTER 2100

Siemens Corporation  
Intellectual Property Department  
170 Wood Avenue South  
Iselin NJ 08830

In re Application of: Hausman, et al.  
Application No. 10/622,259  
Filed: July 18, 2003  
For: AUTOMATIC CONFIGURATION OF A  
REMOTE MODEM

**DECISION ON PETITION  
UNDER 37 C.F.R. § 1.181**

This is a decision on the petition, filed March 7, 2008, under 37 CFR § 1.181 to review the implicit decision of the Technology Center Director to "deny by ignoring" or "refuse to act on" Applicant's previous petition to withdraw the finality of the Office Action dated 19 October 2007 due to that Office Action's failure to address the substance of Applicant's arguments traversing the rejection of claims 1-32.

The petition is **DISMISSED**.

On March 7, 2008, applicant's counsel filed a petition to the Director under 37 CFR § 1.181 to seek relief from actions of the examiner Aurangzeb Hassan in relation to the Final Office action mailed 19 October 2007, stating that

1. Delays in the USPTO's prompt withdrawal of the finality of the 19 October 2007 Office Action unreasonably and unfairly fall on Applicant in the form of extension fees and fees for a Request for Continued Examination or Notice of Appeal, as well as loss of an opportunity to refute the improperly final grounds of rejection.
2. Even if the Petition to Withdraw Finality were promptly denied, delays in the USPTO's prompt issuance of an Advisory Action unreasonably and unfairly fall on Applicant in the form of extension fees.
3. Thus, given that the USPTO has had more than sufficient time to withdraw the finality of the 19 October 2007 Office Action and/or to issue an Advisory Action responsive to the 19 December 2007 Reply, Applicant respectfully interprets these delays as an implicit refusal to act on the part of the Technology Center Director.

**Relief Requested**

Appellant requested that:

1. Implicit refusal to act on the part of the Technology Center Director be reviewed by the Director of the USPTO or his proper delegate.

2. Act on the petition filed on 19 December 2007, requesting that the finality of the 19 October 2007 Office Action be promptly withdrawn.
3. If the 19 December 2007 Petition is denied, an Advisory Action responsive to the 19 December 2007 Reply, be promptly issued.

### **DECISION**

37 CFR § 1.181(f) states that:

...

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

MPEP § 1002.02(c) states that:

Petitions and Requests Decided by the Technology Center Directors

...

3. Petitions invoking the supervisory authority of the \*>Director of the USPTO< under 37 CFR 1.181 involving any ex parte action or requirement in a patent application by the examiner which is not subject to appeal (37 CFR 1.191) and not otherwise provided for, as for example:

(a) prematurity of final rejection, MPEP § 706.07(c);

37 CFR § 1.181(f) states that the mere filing of a petition will not stay any period for reply that may be running against the application, and MPEP § 1002.02(c) states that petitions regarding prematurity of a final rejection by examiner in patent applications, should be decided by Technology Center Directors. Thus, the Decision on Petition mailed on April 11, 2008 and signed by Technology Center Director, Jack Harvey, is the final holding on the petitions, filed December 19, 2007 and February 20, 2008. The shortened statutory time period set forth in the Final office action is continued to run from the mailing date of October 19, 2007.

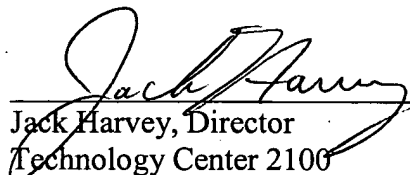
The Office delay in not deciding the petition of December 19, 2007 until the mailing of decision on April 11, 2008, is regretted. While the Office attempts to promptly respond to a petition, there are those instances where delays do occur, as in the instant application. However, the rule (37 CFR § 1.181(f)) clearly indicates that the mere filing of a petition does not relieve petitioners of the duty of taking appropriate action to save the application from abandonment. Therefore, whether petitioner received a Decision on Petition, in this, or in any other finally rejected application, or not, prior to the expiration of a statutory or regulatory period, the only right to

which petitioner was entitled was that of appealing the final rejection or by filing a continuing application. Applicant has received the relief requested in that the petition decision on the petitions filed December 19, 2007 and February 20, 2008 to withdraw the finality of the office action mailed October 19, 2007, was mailed on April 11, 2008; and an advisory action was mailed in the instant application was mailed on April 11, 2008.

Accordingly, the petition is **DISMISSED**.

A petition under 37 C.F.R. 1.181 requires no fee. The application file is being forwarded to the Tech Support staff to refund the fee of \$130.00, that was charged to petitioner on March 7, 2008.

Any inquiry concerning this decision should be directed to Mano Padmanabhan whose telephone number is (571) 272-4210.



Jack Harvey, Director  
Technology Center 2100  
Computer Architecture, Software, and  
Information Security